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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/989,591	11/20/2001	Matthew Walters	72180-88004	1530
7590 07/13/2004 Greensfelder, Hemker & Gale, P.C. Intellectual Property Group Suite 2000 10 South Broadway St. Louis, MO 63102			EXAMINER JOHNSON III, HENRY M	
			ART UNIT 3739	PAPER NUMBER

DATE MAILED: 07/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/989,591	Applicant(s) WALTERS, MATTHEW cc	
	Examiner Henry M Johnson, III	Art Unit 3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 20 is/are allowed.
- 6) ☒ Claim(s) 1,4,8-10,12,14-17 and 19 is/are rejected.
- 7) ☒ Claim(s) 2,3,5-7,11,13 and 18 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>030102</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

This application lacks formal drawings. The informal drawings filed in this application are acceptable for examination purposes. When the application is allowed, applicant will be required to submit new formal drawings.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 4, 8-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 4 is unclear as presented. It appears a word is missing.

Claim 8 recites the limitation "the sandpaper" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 9 recites the limitation "the sandpaper" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 12 recites the limitation "the sandpaper" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 10, 14 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,275,156 to Milligan et al. Milligan et al. disclose a reusable heat pack using a supercooled solution and a trigger means comprising spherical objects (particles) that may be glass or ceramic (Col. 4, line 1) in a receptacle (support). The particles are interpreted as being

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partially dry due to there being in contact with one another and the support. The supercooled solution is sodium acetate tetrahydrate (Col. 3, line 25), although sodium acetate is disclosed in the background for U.S. Patent 4,077,390 (Col. 1, line 68).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,275,156 to Milligan et al. Milligan et al. disclose heat packs using flexible materials such as plastic for the container but do not disclose expressly the composition of the plastic. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to select a durable, economic material because Applicant has not disclosed that a specific material provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with any flexible material that provided the strength and flexibility required for treatment because containment of the solution is the primary consideration. Therefore, it would have been an obvious matter of design choice to modify the array configuration of Larsen to obtain the invention as specified in claims 16 and 17.

Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,275,156 to Milligan et al. in view of U.S. Patent 5,305,733 to Walters. Milligan et al. are discussed above, but do not teach fastening means. Walters discloses a heat pack with a fastener to hold the pack in place (Fig. 6, # 70). It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the fastener as taught by Walters in the invention of Milligan et al. to secure the heat pack to the area being treated.

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Allowable Subject Matter

Claim 20 is allowed.

Claims 2, 3, 5-7, 11, 13 and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

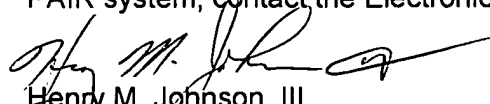
Claims 4, 8, 9 and 12 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Henry M Johnson, III whose telephone number is (703) 305-0910. The examiner can normally be reached on Monday through Friday from 6:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C Dvorak can be reached on (703) 308-0994. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Henry M. Johnson, III
Patent Examiner
Art Unit 3739